

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

-----  
ESTATE OF ROGER D. :  
OWENSBY JR., et al., :  
 :  
Plaintiffs, :  
vs. : Case No. 01-CV-769  
 : (Judge S. A. Spiegel)  
CITY OF CINCINNATI, :  
et al., :  
 :  
Defendants. :  
-----

Deposition of ROBERT B. HEILAND JR.,  
  
defendant herein, called by the plaintiffs for  
  
cross-examination, pursuant to the Federal Rules of  
  
Civil Procedure, taken before me, Wendy Davies  
  
Welsh, a Registered Diplomate Reporter and Notary  
  
Public in and for the State of Ohio, at the offices  
  
of Helmer, Martins & Morgan Co. LPA, 1900 Fourth &  
  
Walnut Centre, 105 East Fourth Street, Cincinnati,  
  
Ohio, on Wednesday, December 3, 2003, at 10:10 AM.

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20 Chief Stephen Tilley

21 Lisa Damstrom, Law Clerk  
22 Helmer, Martins & Morgan Co., L.P.A.

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1 S T I P U L A T I O N S

2 It is stipulated by and among counsel for the

3 respective parties that the deposition of ROBERT B.

4 HEILAND JR., defendant herein, called by the

5 plaintiffs for cross-examination, pursuant to the

6 Federal Rules of Civil Procedure, may be taken at

7 this time by the notary; that said deposition may be

8 reduced to writing in stenotype by the notary, whose

9 notes may then be transcribed out of the presence of

10 the witness; and that proof of the official

11 character and qualifications of the notary is

12 expressly waived.

13 - - -

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2 Examination by: Page

3 Mr. Martins . . . . . 6

4 Mr. Hardin . . . . . 104

5 Mr. Martins . . . . . 132

6 Mr. Hardin . . . . . 139

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8 E X H I B I T S

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11 Plaintiff's Exhibits 69 & 70 . . . . . 12

12 Plaintiff's Exhibit 71 . . . . . 29

13 Plaintiff's Exhibit 72 . . . . . 50

14 Plaintiff's Exhibit 73 . . . . . 51

15 Plaintiff's Exhibit 74 . . . . . 56

16 Plaintiff's Exhibit 75 . . . . . 66

17 Plaintiff's Exhibit 76 . . . . . 68

18 Plaintiff's Exhibit 77 . . . . . 75

19 Plaintiff's Exhibit 77A . . . . . 77

20 Plaintiff's Exhibit 78 . . . . . 92

21 Plaintiff's Exhibits 79 & 80 . . . . . 137

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1 a guide for some other employment history. If you  
2 go to the second page, midway through we have the  
3 Hamilton County juvenile court officer, and then  
4 from, am I correct in reading this, from '94 through  
5 '97 you worked at Good Samaritan Hospital as a  
6 health tech?

7 A. That's correct.

8 Q. What are the duties of a health tech,  
9 technician?

10 MR. WEISENFELDER: Then or now?

11 Q. At this time. What were your duties as a  
12 health technician?

13 A. At that time, the best way to explain it,  
14 I think, is the hospital did away with nursing  
15 assistants and LPNs and they kind of combined the  
16 two jobs. So my duties would be to assist the  
17 nurse, an RN: Vital signs, bed pans, just basically  
18 being a nursing assistant.

19 Q. Did you have to have any particular  
20 qualifications in order to be a health technician?

21 A. Good Samaritan Hospital trains you. I  
22 think it was a six to eight week program that they  
23 trained you in-house.

24 Q. Before that, from '93 to '94, if I'm

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1 reading this correctly, you worked for Eldercare as  
2 an EMT; is that right?

3 A. That's correct.

4 Q. Prior to that, from '91 to '93, College of  
5 Mt. St. Joe, retail coordinator?

6 A. Yes.

7 Q. What is a retail coordinator?

8 A. Basically, worked in shipping/receiving in  
9 the college bookstore.

10 Q. If you turn the page again, on the third  
11 page there is a question concerning military  
12 service. And I see that you at some point in time  
13 were a combat medic in the United States Army  
14 Reserve. Can you explain to me when you were a  
15 combat medic?

16 A. Yes. I attended Basic Training '91, '92.  
17 After that went to Fort Sam Houston for combat medic  
18 training. Subsequently was transferred to the  
19 Inactive Reserve for the remaining of my service.

20 Q. Fort Sam Houston is a major medical center  
21 in the Army, isn't it?

22 A. Yes.

23 Q. Then in the Inactive Reserve were you  
24 assigned to a unit?

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1 A. Yes. It was a unit out of St. Louis.

2 Q. Without going into any detail, what kind  
3 of training did you receive as a combat medic?

4 A. Basic first aid for combat type injuries:  
5 Give shots, IVs, assessments.

6 Q. Would that include CPR?

7 A. Yes.

8 Q. Do these two documents, 69 and 70, fairly  
9 reflect your employment history?

10 A. Yes.

11 Q. Are EMTs licensed? Is there a  
12 qualification process that they go through?

13 A. Yes.

14 Q. Certification?

15 A. At the time they had a national  
16 certification and a state certification. Some  
17 states would adopt, if you were nationally  
18 registered, they would adopt you.

19 Q. I gather that when you worked for  
20 Eldercare you were a certified EMT?

21 A. Yes.

22 Q. When you worked for Good Sam were you a  
23 certified EMT?

24 A. I'm not sure if my certification -- how

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1 long it carried on.

2 Q. In 2000 were you a certified EMT?

3 A. No.

4 Q. But you had the EMT experience and the  
5 knowledge?

6 A. Yes.

7 Q. Had you been asked, do you feel that you  
8 would have been qualified to provide CPR to Mr.  
9 Owensby on the night of November 7, 2000?

10 MR. WEISENFELDER: Objection.

11 Go ahead. Go ahead.

12 THE WITNESS: I'm sorry?

13 MR. MARTINS: Counsel will make objections  
14 from time to time, but unless he instructs you  
15 not to answer, you still have to answer the  
16 question.

17 THE WITNESS: Okay.

18 MR. MARTINS: So he just made an objection  
19 and he told you to go ahead and answer.

20 A. Okay. What was the question? I was  
21 confused.

22 Q. Had you been asked, do you feel that you  
23 would have been qualified to provide CPR to Mr.  
24 Owensby on the night of November 7, 2000?

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Page 18

1 MR. WEISENFELDER: Objection.  
2 Go ahead.  
3 A. Was I qualified to perform CPR? Did I  
4 feel I was qualified? Yes, had I been asked.  
5 Q. Have you ever provided, I'm going to use  
6 the term CPR, but I'm looking at in my mind  
7 resuscitation of somebody who has drowned?  
8 A. Somebody that has drowned?  
9 Q. Yes. You often hear of kids falling in a  
10 pool or people --  
11 A. Have I actually done CPR --  
12 Q. Performed CPR.  
13 A. -- on somebody that's drowned? No.  
14 Q. Have you performed CPR on somebody who was  
15 unconscious?  
16 A. Yes.  
17 Q. Were you successful in resuscitating the  
18 individual?  
19 A. No.  
20 Q. Had there been occasions where you were  
21 successful?  
22 A. No. That was the only one time.  
23 Q. Oh, it was only once?  
24 A. (Nodding head.)

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1 Q. I take it as an officer for the Village of  
2 Golf Manor there is some medical first aid type  
3 training that you also undergo?  
4 A. I have not.  
5 Q. Has the Village of Golf Manor required  
6 that, or do you know whether or not the Village of  
7 Golf Manor requires that officers have any CPR  
8 training?  
9 MR. WEISENFELDER: Just to keep everything  
10 straight, you're talking about 2000 or now?  
11 MR. MARTINS: Now.  
12 MR. WEISENFELDER: Three years later?  
13 MR. MARTINS: Yes. I'm talking now.  
14 MR. WEISENFELDER: Okay.  
15 A. I am not.  
16 Q. You're not aware?  
17 A. I'm not aware.  
18 Q. Now I'm going to go back. As of  
19 November 7, 2000, do you know whether or not the  
20 Village of Golf Manor required that its officers  
21 have CPR training?  
22 A. I do not know.  
23 Q. Nevertheless, on the night of November 7,  
24 2000 you feel that you were qualified to perform CPR

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1 based on your past experience; is that right?  
2 A. That's right.  
3 Q. I take it from what I've seen in this case  
4 you did not perform any CPR or any medical --  
5 provide any medical assistance to Mr. Owensby; is  
6 that right?  
7 MR. WEISENFELDER: Objection.  
8 Go ahead.  
9 A. That's right.  
10 Q. I want to take you back now to November 7,  
11 2000, to that evening. As I understand it, you were  
12 at the Golf Manor police station and received a  
13 notification of an officer needs assistance call; is  
14 that right?  
15 A. That's right.  
16 Q. Starting from that point would you walk me  
17 through what happened.  
18 A. At that point I got into my cruiser. I  
19 was actually in the police station when the call  
20 came out. I knew it was close, so I went to my  
21 cruiser, turned the lights and sirens on, and  
22 responded to the scene.  
23 Pulled onto the parking lot, the Sunoco  
24 parking lot, parked my car, got out of my car, went

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1 around the front of the cruiser. And by the time I  
2 got to the front corner, the passenger's side, I saw  
3 a Huntington Meadows security guy waiving me down  
4 like everything was okay, slow down.  
5 Q. That's what you understood it to mean?  
6 A. That's what I understood it to mean.  
7 Q. Okay.  
8 A. So I stopped at the front of my cruiser  
9 and I saw some distance away the rear passenger's  
10 side of a car, two police officers, and who I now  
11 know to be Roger Owensby laying on the ground.  
12 Q. Okay. Go ahead.  
13 A. Did I answer your question?  
14 Q. No. When you said two police officers,  
15 and then you said Owensby, I thought obviously he  
16 was not one of the police officers. Okay.  
17 A. He appeared to be handcuffed, to me. And  
18 there was one on each side of him.  
19 Q. Can you clarify that for a second? He  
20 appeared to be handcuffed? When you say "to me,"  
21 you mean it appeared to you that he was handcuffed?  
22 A. It appeared to me --  
23 Q. That he was handcuffed?  
24 A. -- that he was handcuff.

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1 Q. All right.  
2 A. And there was a police officer on each  
3 side of him, there was a few people around. And one  
4 of the officers asked if they could put him in my  
5 cruiser.  
6 Q. When that question was asked where was Mr.  
7 Owensby?  
8 A. Mr. Owensby was still on the ground or  
9 they were in the process of picking him up.  
10 Q. Picking him up? Okay. Go ahead.  
11 A. I said, "Sure." They picked him up, one  
12 on each side, under each arm, and brought him to my  
13 cruiser. I opened the rear passenger door and they  
14 placed Mr. Owensby in the back of my car.  
15 Q. Let me show you what's previously been  
16 marked as Exhibit 9. Do you recall whether or not  
17 that is a photograph of the car that the officers  
18 and Mr. Owensby were near when you pulled in?  
19 A. I don't recall what type of car it was. I  
20 can't see the background in the picture.  
21 Q. As perspective goes, this is taken from  
22 the entrance of the convenience store looking out.  
23 A. Having said that, then they would have  
24 been at the rear of this car.

Page 23

1 Q. Did you watch them place Mr. Owensby in  
2 the back seat of the car, of the Golf Manor car?  
3 A. I opened the door, took a step away, and  
4 they were having trouble placing him in the back of  
5 the car. No. I didn't watch them place him all the  
6 way in the car.  
7 Q. What did you do as they were placing him?  
8 Where was your attention directed as they were  
9 placing him in the car?  
10 A. Looking out the rest of the parking lot.  
11 At one point I walked away and went over to another  
12 Golf Manor officer, Officer Campbell.  
13 Q. Was there a point in time where you  
14 returned to your cruiser?  
15 A. Yes.  
16 Q. So you walk away toward Officer Campbell,  
17 and then some time goes by and you and Officer  
18 Campbell, or at least you, return to your cruiser,  
19 right?  
20 A. Correct.  
21 Q. Do you have an estimate of how much time  
22 went by in that interval?  
23 A. I don't recall.  
24 Q. When you returned to your cruiser was

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1 Officer Campbell with you?  
2 A. I don't recall.  
3 Q. When you returned to the cruiser were the  
4 doors, the back doors, closed?  
5 A. Yes, they were.  
6 Q. Did you check on Mr. Owensby?  
7 MR. WEISENFELDER: Objection.  
8 Go ahead.  
9 A. No.  
10 Q. No?  
11 A. No.  
12 Q. Did you ever look in to check on Mr.  
13 Owensby?  
14 MR. WEISENFELDER: Objection.  
15 Go ahead.  
16 A. Yes.  
17 Q. When?  
18 A. I don't know how long it was, but I did  
19 look in the back of the cruiser.  
20 Q. When you did look in -- let me back up.  
21 The cruiser was situated near a gas  
22 island, correct?  
23 A. Correct.  
24 Q. The gas island has those halogen lights on

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1 it, correct?  
2 A. I don't recall.  
3 Q. In any event, there was sufficient light  
4 from the gas island and from the convenience store  
5 to see Mr. Owensby in the back seat of the car,  
6 right?  
7 A. The scene was well lit.  
8 Q. When you did look in, what did you see?  
9 A. Mr. Owensby was handcuffed and laying in  
10 the back of the cruiser.  
11 Q. How was he situated in the back seat?  
12 Sitting up, laying down?  
13 A. He was laying down.  
14 Q. Where was his head?  
15 A. His head was facing the passenger's side  
16 of the car.  
17 Q. When you looked in were you on the  
18 passenger's side of the car?  
19 A. Correction. His head was facing the  
20 driver's side of the car. When I looked in I was on  
21 the passenger's side.  
22 Q. So you were looking in through the  
23 passenger's side rear window?  
24 A. Correct.

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1 Q. The windows I take it were rolled up?  
2 A. Yes.  
3 Q. So when you looked in, the part of Mr.  
4 Owensby's body closest to you on the passenger's  
5 side would have been his feet and legs?  
6 A. That's correct.  
7 Q. Were they on the seat?  
8 A. I don't recall.  
9 Q. Now, was he laying on his side, on his  
10 stomach, on his back? How was he positioned on the  
11 seat?  
12 A. He was on his side.  
13 Q. Do you know which side?  
14 A. I believe it was his right side.  
15 Q. Was his face then facing the trunk?  
16 A. I don't recall.  
17 Q. Let me show you what's previously been  
18 marked as Exhibit 67. I believe that is a  
19 photograph of the back seat of your Golf Manor  
20 cruiser?  
21 MR. HARDIN: I'm sorry, what was the  
22 number?  
23 MR. MARTINS: 67.  
24 Q. Can you tell whether or not that's taken

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1 from the driver's side or the passenger's side?  
2 A. I can't tell.  
3 Q. Do you recall if he was laying on his  
4 right side, and his head would have been behind the  
5 driver's seat, correct?  
6 A. His head was behind the driver's seat.  
7 Q. So then he would have been facing the  
8 trunk of the car?  
9 MR. WEISENFELDER: Objection.  
10 Go ahead.  
11 A. What's the question?  
12 Q. If he's laying on the back seat of the car  
13 and his head is behind the driver's seat, he's  
14 laying on his right shoulder, on his right side,  
15 wouldn't his face be facing the trunk?  
16 A. I don't recall how his face was.  
17 Q. When you looked in at him did you notice  
18 any movement?  
19 A. No.  
20 Q. Did you hear any sounds?  
21 A. No.  
22 Q. Did you do anything in response to looking  
23 in on Mr. Owensby?  
24 A. No.

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1 Q. Why did you look in?  
2 A. I don't know.  
3 Q. While you were standing outside the car  
4 near the passenger rear door did you talk with any  
5 other officers?  
6 A. Yes.  
7 Q. Who did you talk to?  
8 A. I spoke with Officer Brazile.  
9 Q. He's a Cincinnati police officer?  
10 A. He's a Cincinnati police officer, that's  
11 correct.  
12 Q. You know him from the academy?  
13 A. I do.  
14 Q. Did you talk with anyone else?  
15 A. Officer Campbell. I don't know if I spoke  
16 with anybody else at that time.  
17 Q. What did you and Officer Campbell talk  
18 about?  
19 A. I don't recall.  
20 Q. What did you and Officer Brazile talk  
21 about?  
22 A. I hadn't seen him in a while. We went to  
23 the academy together at Scarlet Oaks, and I asked  
24 him how he was doing. He said, "Good." And we

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1 shook hands.  
2 Q. Did Officer Brazile look in the car?  
3 A. Yes.  
4 Q. Do you recall whether or not he used a  
5 flashlight?  
6 A. I don't recall if he did or not.  
7 Q. Did he say anything to you after he looked  
8 in the car?  
9 A. He did say something.  
10 Q. Do you recall what he said?  
11 A. I don't recall exactly what he said.  
12 (Plaintiff's Exhibit 71  
was marked for identi-  
13 fication.)  
14 Q. I'll direct you, but this is an excerpt  
15 from Officer Brazile's deposition. It's marked as  
16 Exhibit 71.  
17 MR. WEISENFELDER: Do you want him to read  
18 the whole thing?  
19 MR. MARTINS: No.  
20 Q. I'll direct you. Specifically, I want to  
21 direct your attention to page 54.  
22 Beginning at line 3, you see the question  
23 is posed: "Did you say anything to Officer Heiland  
24 at that time, after seeing Mr. Owensby with your



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1 flashlight?"  
2 And Officer Brazile says, "Yes."  
3 The question is: "What did you say to  
4 Officer Heiland?  
5 "Answer: I walked around to the other  
6 side of the vehicle.  
7 "Question: To the -- to the --  
8 "Answer: To where they were.  
9 "Question: -- rear of the passenger's  
10 side of the vehicle?  
11 "Answer: Where they were standing.  
12 "Question: Okay.  
13 "And I asked him, I said, 'The guy you  
14 have in your car, is he okay?' I said, 'Can he  
15 breathe?' I said, 'He's in a' -- you know, position  
16 that looked like he was in, it may have been hard,  
17 so I asked him. I'm figuring he's their prisoner.  
18 No one ever said whose he was. I figured he was  
19 theirs, because he was in their car.  
20 "And basically I was just trying to let  
21 them know to check on him, just to see what's going  
22 on with him or did they know or had they checked. I  
23 don't know. I just had arrived.  
24 "And basically when I told them, you know,

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1 they basically just stood there and kind of like  
2 shrugged their shoulders.  
3 "Question: Both of them?  
4 "Answer: From what I recall."  
5 Does that refresh your recollection as to  
6 what was said?  
7 A. No. I don't -- I don't recall what he  
8 said. I know we had a conversation and I --  
9 Q. So you don't know if what he's saying here  
10 is accurate or inaccurate?  
11 A. I do not.  
12 Q. If you look at page 56, beginning with  
13 line 14 the question is: "As I recall, your  
14 statement was something along the lines of: This  
15 looks fucked up, can he breathe, it don't look like  
16 he can from the way he's laying."  
17 Answer is: "Uh-huh."  
18 "Question: Is that accurate to your  
19 recollection?  
20 "Answer: Yes.  
21 "And you saying, in response to that,  
22 Officer Heiland and possibly the other officer  
23 simply shrugged their shoulders?"  
24 "Answer: Yes."

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1 Do you recall shrugging your shoulders in  
2 response to something that Officer Brazile said?  
3 A. I do not recall.  
4 Q. Do you recall whether or not Officer  
5 Brazile looked in the car before or after you looked  
6 in the car to see Mr. Owensby?  
7 A. I do not know.  
8 Q. What's the next thing you remember as far  
9 as standing at the back of the car? You had a  
10 conversation with Officer Brazile, what's the next  
11 thing that happens?  
12 A. The next thing that happens, I believe, is  
13 a sergeant, Cincinnati sergeant --  
14 Q. Male?  
15 A. Male sergeant. I don't recall his name.  
16 Q. Sergeant Watts?  
17 A. Sergeant Watts. I think some of my  
18 statements I say Sergeant Browner. I think there  
19 was two sergeants there.  
20 Q. There were.  
21 A. Sergeant Watts, the male sergeant, asked  
22 me -- he wanted to speak to the prisoner. So I went  
23 over to the side of the car to roll down the window  
24 for him. He subsequently opened it. I rolled the

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1 window down. He opened the door and tried to speak  
2 to Mr. Owensby.  
3 Q. When you rolled down the window you did  
4 this from the driver's door?  
5 A. That's correct.  
6 Q. These are automatic windows?  
7 A. Yes, sir.  
8 Q. Where was Sergeant Watts in relation to  
9 your cruiser? Was he on the driver's side? Was he  
10 on the passenger's side?  
11 A. He was on the driver's side by the rear  
12 door.  
13 Q. Do you recall if anybody was with Sergeant  
14 Watts?  
15 A. I don't know.  
16 Q. So you rolled down the window for him, and  
17 what does he do?  
18 A. He says something to the effect of, Hey,  
19 buddy, can I talk to you? Hey. He tries to arouse  
20 Mr. Owensby.  
21 Q. Did you hear any response from Mr.  
22 Owensby?  
23 A. No.  
24 Q. Did you see Mr. Owensby move?

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Page 34

1 A. No.  
2 Q. Were you looking in the car at the time?  
3 A. I don't believe so.  
4 Q. You hear no response from Mr. Owensby.  
5 What's the next thing that happens?  
6 A. The sergeant starts to give some orders to  
7 the other officers.  
8 Q. This is after he's opened the door?  
9 A. Correction. Let me back up.  
10 Sergeant gets on his radio, calls for  
11 medical, and he starts giving directions to the  
12 officers to get Mr. Owensby out of the car.  
13 Q. Does all of this occur after the sergeant  
14 has opened the back door, the driver's side back  
15 door?  
16 A. Yes.  
17 Q. When the sergeant opened the driver's side  
18 back door did he reach in and touch Mr. Owensby?  
19 A. I don't know.  
20 Q. What happens after that?  
21 A. Sergeant Watts is giving directions to the  
22 officers to get him out. I walked over to the other  
23 side and stood off to the side with Officer  
24 Campbell.

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1 Q. So you walked over to the passenger's  
2 side, rear passenger's side, of your cruiser?  
3 A. To that side. I wasn't standing by that  
4 immediate area. We were off to the side.  
5 Q. What did you see and hear at that time?  
6 A. At that time City of Cincinnati officers  
7 were performing CPR.  
8 Q. Was Mr. Owensby still handcuffed?  
9 A. I don't know.  
10 Q. Do you know, based on your training as a  
11 medic and as an EMT, whether or not CPR can be  
12 properly performed if a person's hands are  
13 handcuffed behind their back?  
14 A. I don't know if it can or not.  
15 Q. From your training, isn't it true that the  
16 person should be laying flat on the ground when  
17 you're doing the chest compression?  
18 A. I would think that they should be flat on  
19 the ground.  
20 Q. Having the arms handcuffed behind the back  
21 would hinder laying the person flat on the ground,  
22 wouldn't it?  
23 MR. HARDIN: Objection.  
24 MR. WEISENFELDER: Go ahead.

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1 A. Are you asking for my opinion?  
2 Q. Well, based on your experience as an EMT  
3 and as a medic.  
4 A. It could.  
5 Q. Were you there when the, I guess, fire  
6 rescue, Cincinnati Fire Rescue, arrived?  
7 A. I was still there.  
8 Q. Did you observe what those people, the  
9 fire rescue, did?  
10 A. I don't recall.  
11 Q. Do you recall hearing anyone from the fire  
12 rescue when they arrived telling the officers to  
13 remove the handcuffs from Mr. Owensby?  
14 A. I don't recall.  
15 Q. Did you assist in any way in performing  
16 CPR or providing any medical aid for Mr. Owensby  
17 once he was taken out of the car?  
18 A. No, sir.  
19 Q. Did Officer Campbell?  
20 A. No, sir, I don't believe so. He went to  
21 get a mask, if that's assisting.  
22 Q. Explain to me what a mask is.  
23 A. A CPR mask, basically just a round  
24 plastic, sometimes plastic, mask. The ones we have

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1 are plastic, with a tube that comes out. Basically  
2 creates a good vacuum, so to speak, so you can blow  
3 in. And if any vomit or anything else comes out, it  
4 will not contaminate the person performing CPR.  
5 Q. Based on your experience, it's not  
6 uncommon when performing CPR for vomit or other  
7 materials from either the lungs or in the throat to  
8 come out?  
9 MR. WEISENFELDER: Objection.  
10 Go ahead.  
11 A. I don't think I have enough experience in  
12 actually performing it to say.  
13 Q. Okay. Did you observe any vomit or other  
14 material come out of Mr. Owensby's mouth while the  
15 CPR was being performed?  
16 A. No.  
17 Q. Were you able to tell one way or the other  
18 if anything was coming out of his mouth?  
19 A. No.  
20 Q. You weren't close enough?  
21 A. Correct.  
22 Q. All right. What's the next thing that  
23 happened? Fire rescue arrives, they're performing  
24 CPR. What else happens?



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1 Q. Do you know whether or not any lawyers  
2 showed up on the scene?  
3 A. I don't know. The news was across the  
4 street.  
5 Q. The what?  
6 A. The news.  
7 Q. What is the news?  
8 A. The news. The media.  
9 Q. Oh. Okay.  
10 A. Yeah.  
11 MR. WEISENFELDER: Wait until there's a  
12 question.  
13 THE WITNESS: Sorry.  
14 Q. Am I correct in understanding that when  
15 you initially pulled into the Sunoco station you saw  
16 two Cincinnati Police Department uniformed officers  
17 kneeling down over Mr. Owensby?  
18 A. Correct.  
19 Q. Were they kneeling on him or next to him?  
20 A. From where I was standing I couldn't be  
21 exact -- I couldn't say with certainty where their  
22 knees were. It appeared that they were just next to  
23 him, crouched down.  
24 Q. As you got out of your car and circled

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1 around to the right of the -- to the front of the  
2 car and the Huntington Meadows security officer  
3 waved you down, at this point in time the officers  
4 were picking up Mr. Owensby off of the ground; is  
5 that right?  
6 A. Correct.  
7 Q. When he was picked up off the ground you  
8 believe he was handcuffed; is that right?  
9 A. I believe he was.  
10 Q. That's because of the position of his  
11 arms?  
12 A. Correct.  
13 Q. The officers that picked him up, were  
14 those officers Jorg and Caton?  
15 A. Yes.  
16 Q. It was those two officers who escorted Mr.  
17 Owensby towards your car?  
18 A. Correct.  
19 Q. Do you recall which officer asked you for  
20 permission to place Mr. Owensby in your car?  
21 A. I do not know.  
22 Q. Do you know whether or not it was one of  
23 those two, that is Caton or Jorg?  
24 A. I do not know.

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1 Q. As they were coming toward you bringing  
2 Mr. Owensby, were you facing them?  
3 A. Yes.  
4 Q. So you were also facing Mr. Owensby,  
5 right?  
6 A. Yes.  
7 Q. Could you see his face?  
8 A. Yes.  
9 Q. What did his face look like?  
10 A. It appeared that he had a little bit of  
11 blood on his face, and I don't recall that there was  
12 any facial expression or anything like that.  
13 Q. Did he have any blood on his forehead?  
14 A. I don't recall.  
15 Q. Were his eyes opened or closed?  
16 A. I don't know.  
17 Q. Was his head erect or down or back?  
18 A. It was down a little bit.  
19 Q. Did you hear him say anything as they were  
20 bringing him toward your cruiser?  
21 A. No.  
22 Q. Did you see him move in any fashion as  
23 they were bringing him towards your cruiser?  
24 A. No.

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1 Q. I mean, obviously he's moving, because  
2 they're bringing him, but I mean, in terms of  
3 actively resisting, trying to pull away from them or  
4 kicking at them, anything like that?  
5 A. I didn't see him kick. No major  
6 movements. It appeared that they were struggling to  
7 get him to the cruiser.  
8 Q. As you sit here today, you don't recall  
9 whether or not the struggling was because they were  
10 carrying somebody who was unconscious or whether or  
11 not it was resistance of some sort?  
12 A. I do not know.  
13 Q. Would you describe for me how they were  
14 bringing him to the cruiser, that is their position  
15 in relation to Mr. Owensby.  
16 A. One officer on each side with their arm  
17 through his (indicating).  
18 Q. So his arms are handcuffed behind his  
19 back?  
20 A. Handcuffed.  
21 Q. They are on each side? Who is on Mr.  
22 Owensby's right as you're looking, your left? Do  
23 you understand what I'm saying?  
24 A. No.

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1 Q. Mr. Owensby is coming towards you.  
2 A. Okay.  
3 Q. Who is to Mr. Owensby's right? Who is  
4 holding his right arm?  
5 A. If I'm looking at them and they're coming  
6 towards me, Officer Jorg is on --  
7 Q. -- Owensby's left?  
8 A. Owensby's left. Officer Caton is on the  
9 right.  
10 Q. As I understand it, his arms are  
11 handcuffed behind his back and each officer has an  
12 arm through, I guess, near his elbow through the  
13 arm?  
14 A. I believe so, yes.  
15 Q. Were the officers breathing heavily like  
16 someone who had just been in a struggle?  
17 A. They appeared that they were breathing  
18 heavy, disheveled.  
19 Q. Right. Did you notice whether or not Mr.  
20 Owensby was breathing heavily?  
21 A. I did not.  
22 Q. Am I correct in understanding that you saw  
23 no movement and heard no sounds from Mr. Owensby as  
24 they brought him toward the car?

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1 A. That's correct.  
2 Q. Could you tell whether or not, as they  
3 approached you and your car, whether or not Mr.  
4 Owensby was unconscious?  
5 A. I couldn't tell.  
6 Q. I take it you did not check?  
7 MR. WEISENFELDER: Objection.  
8 Go ahead.  
9 A. I did not.  
10 Q. So am I correct in understanding that when  
11 Jorg and Caton placed Mr. Owensby in your car you  
12 did not know the condition of Mr. Owensby at that  
13 time?  
14 A. I did not know.  
15 Q. The physical condition of Mr. Owensby?  
16 A. I did not.  
17 Q. You did not know whether or not he was  
18 conscious or unconscious?  
19 A. I did not.  
20 Q. As I understand it, after you opened the  
21 door Officer Jorg and Caton put Owensby in the back  
22 seat and then Caton went around to the driver's side  
23 to pull Owensby into the back seat; is that right?  
24 A. He did go around to the other side to

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1 help --  
2 Q. Did you see him -- I'm sorry, I didn't  
3 mean to interrupt you. Go ahead.  
4 A. -- to help, I assumed to help get Mr.  
5 Owensby in the car.  
6 Q. Did you see what Officer Caton did when he  
7 went around to the driver's rear door?  
8 A. No.  
9 Q. Did you see him open the driver's rear  
10 door?  
11 A. No.  
12 Q. So when you turn your attention away from  
13 the car, Mr. Owensby was being placed in the car and  
14 Caton was going around to the driver's rear door?  
15 A. Correct.  
16 Q. When they placed Mr. Owensby in the car he  
17 was placed in head first, correct?  
18 A. Correct.  
19 Q. In your experience, when you place a  
20 prisoner in a car, in a police cruiser, who's  
21 handcuffed, assuming the prisoner is conscious,  
22 would they go in head first or would they place  
23 their feet in and then their butt and then the rest  
24 of their torso in?

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1 MR. HARDIN: Objection.  
2 MR. WEISENFELDER: You can answer.  
3 THE WITNESS: Objection, go ahead?  
4 A. Assuming that they're conscious, that's  
5 correct, feet first and set them in the cruiser.  
6 Q. In this case he was head first and torso  
7 in, and then you saw Caton go around to the other  
8 side of the car?  
9 A. Correct.  
10 Q. When Officer Caton walked around to the  
11 other side of the car were Mr. Owensby's legs still  
12 outside of the car?  
13 A. I don't know.  
14 Q. Did you hear any grunting or groaning from  
15 the officers as they were trying to put Mr. Owensby  
16 in the car?  
17 MR. WEISENFELDER: I'm going to object.  
18 Grunting or groaning from the officers or from  
19 Mr. Owensby?  
20 MR. MARTINS: From the officers. From  
21 either Jorg or Caton.  
22 Q. You can answer.  
23 MR. WEISENFELDER: You can answer.  
24 THE WITNESS: Okay.

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1 of this car being parked next to your car?

2 A. No.

3 Q. At this point in time do you know whether

4 or not you had already had your conversation with

5 Officer Brazile?

6 A. I do not.

7 Q. We're at 4 minutes 30 seconds. Do you

8 know whether or not at this point in time you had

9 checked on Mr. Owensby, that is looked in on him?

10 A. I do not know.

11 Q. 4 minutes, 33 seconds. There is a car in

12 the middle of the screen. That would be Officer

13 Campbell's Golf Manor cruiser?

14 A. Correct.

15 (Discussion off the record.)

16 (Plaintiff's Exhibit 75  
was marked for identi-

17 fication.)

18 Q. Let me show you, sir, Exhibit 75, which I

19 believe is a transcript of your testimony during

20 Officer Caton's trial. If you'd just take a look at

21 that and tell me whether or not that seems to be the

22 case.

23 A. Yes, it does.

24 Q. What's your best estimate of, from the

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1 time you got the officer needs assistance call, how

2 much time it took to get to the scene, to the

3 convenience store parking lot?

4 A. 30 seconds to a minute maybe.

5 Q. Does the police station where you were

6 located, does it have a life squad or an EMT unit

7 there?

8 A. Yes.

9 Q. So for them to get to that same location

10 would have taken approximately the same amount of

11 time?

12 A. I don't know how long it would have taken

13 them.

14 Q. Well, it took you between 30 seconds and a

15 minute?

16 A. Correct.

17 Q. Is there any reason to believe that it

18 would have taken them a longer amount of time?

19 MR. WEISENFELDER: Objection.

20 Go ahead.

21 A. If they had to -- I don't know how life

22 squad and fire departments work, if they have to get

23 dressed and get down to the car and take off. I

24 don't know the procedures.

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1 (Plaintiff's Exhibit 76  
was marked for identi-

2 fication.)

3 Q. Let me show you what's marked as

4 Exhibit 76. Exhibit 76 is the oath that you took in

5 February 1, 2000 when you became a police officer

6 for the Village of Golf Manor, correct?

7 A. Correct.

8 Q. Before November 7, 2000 did you have any

9 experience with an arrest being made by another

10 police department and them placing their prisoner in

11 a Golf Manor cruiser?

12 A. I don't know.

13 Q. Since November 7, 2000 have you had any

14 experience with a police department, other than Golf

15 Manor, making an arrest and placing the prisoner in

16 a Golf Manor cruiser?

17 MR. HARDIN: Objection.

18 A. No.

19 Q. Do you know if on November 7, 2000 there

20 was a policy or some guidance in place that

21 addressed the situation that arose that evening?

22 MR. WEISENFELDER: I'm going to object as

23 to the vague question in terms of situation.

24 MR. MARTINS: Yes. Let me rephrase.

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1 Q. Do you know whether or not Golf Manor had

2 a policy or guidance for its officers on November 7,

3 2000 to address the situation where a Golf Manor

4 officer is asked to give permission to place a

5 person who has been arrested by another police

6 department in a Golf Manor cruiser?

7 MR. WEISENFELDER: Objection.

8 Go ahead, you can answer.

9 A. I knew at that time, based on working,

10 training, that we could go over to other departments

11 and assist them with whatever they needed.

12 Q. I don't mean to cut you off.

13 A. That's okay.

14 Q. That was this mutual aid agreement that

15 was signed by the various police departments in the

16 greater Cincinnati area?

17 A. Correct.

18 Q. Other than knowing that you could assist

19 other police departments, do you know whether or not

20 there was any policy or guidance or custom in place

21 at Golf Manor to address what an officer's duties

22 and responsibilities were where another police

23 department asked him to place their prisoner in his

24 car?

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1 A. When we would respond to a scene to assist  
2 another department we would be under their command,  
3 no matter what the rank. If you pull up on the  
4 scene you assist them in how they need you to  
5 assist.  
6 Q. Did you have an understanding as to  
7 whether or not you would, in this situation,  
8 November 7, 2000, when you responded to the Sunoco  
9 station, did you understand that you were assisting  
10 the Cincinnati Police Department?  
11 A. Yes. The assistance call came out.  
12 That's why I was there.  
13 Q. In responding to this assistance call, did  
14 you understand that you would be subject to the  
15 rules, policies, and customs of the Cincinnati  
16 Police Department or the Golf Manor Police  
17 Department?  
18 A. My understanding was I would be there at  
19 the scene to assist them how they needed me to.  
20 Q. But what rules governed your conduct? Was  
21 it Golf Manor or was it Cincinnati Police  
22 Department?  
23 MR. WEISENFELDER: Objection.  
24 Go ahead.

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1 Q. If you know.  
2 A. I don't know.  
3 Q. Do you recall receiving any instruction or  
4 guidance concerning what rules a Golf Manor officer  
5 had to follow when he was in this situation of  
6 assisting another police department?  
7 A. Through working with other officers in  
8 field training and going to other scenes and other  
9 departments, I just understood that we were under  
10 their direction for as long as they needed  
11 assistance and that was it.  
12 Q. Did you have any understanding that you  
13 would be bound -- or whether or not you would be  
14 bound by the policies, rules, and regulations of the  
15 Cincinnati Police Department if you were assisting  
16 the Cincinnati Police Department?  
17 A. I didn't know.  
18 Q. You didn't know?  
19 A. I didn't -- at that time I don't -- I  
20 don't know.  
21 Q. And as I take it at that time you had  
22 received no instruction on whether or not you were  
23 bound by, say in this case, Cincinnati's rules and  
24 regulations or continued to be bound by Golf Manor's

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1 rules and regulations; is that correct?  
2 MR. WEISENFELDER: Objection as to form.  
3 If you can answer that, go ahead.  
4 A. I can't answer it.  
5 Q. My question is just whether or not you had  
6 any instruction on November 7th as to which  
7 department's rules and regulations you were to  
8 follow when you were assisting another police  
9 department.  
10 MR. WEISENFELDER: Objection.  
11 Q. The question is just whether or not you  
12 had any instruction.  
13 A. No.  
14 Q. As of November 7, 2000, did you have any  
15 understanding as to whether you had any  
16 responsibilities for the safety of a prisoner who  
17 was placed in your cruiser?  
18 MR. WEISENFELDER: I'm going to object  
19 again as to the form.  
20 Go ahead.  
21 A. The question again, please?  
22 Q. As of November 7, 2000, did you have any  
23 understanding of your responsibilities for the  
24 safety of a prisoner who is arrested by another

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1 police force but placed in your cruiser?  
2 MR. WEISENFELDER: Objection.  
3 Go ahead.  
4 A. My understanding at that time is I would  
5 be responsible for my prisoners, anybody that was in  
6 my custody. If somebody is not my prisoner, not in  
7 my custody, then on the assistance call if somebody  
8 puts their prisoner in the back of my car, they  
9 asked to put them in the back of my car and I'm  
10 there for assistance. It's their prisoner and it's  
11 in their custody. So it's their responsibility.  
12 Q. Did you have any understanding that by  
13 accepting the prisoner and placing him in the back  
14 seat of the Golf Manor cruiser that the prisoner was  
15 now in your custody?  
16 MR. WEISENFELDER: Objection as to the  
17 word "accepting."  
18 Go ahead and answer.  
19 A. No.  
20 Q. Did you receive any training as to the  
21 distinction we've just been talking about, that  
22 whether or not a prisoner placed in a Golf Manor car  
23 from another jurisdiction, as to who had custody of  
24 the prisoner?



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1 A. From going to other calls and seeing it  
2 done before, the prisoner's always the arresting  
3 officer's or the agency's jurisdiction where you're  
4 at.  
5 Q. You had had this arise in the past?  
6 A. I have seen it done on other calls.  
7 Q. Before November 7, 2000?  
8 A. I don't recall exact dates, but, yeah.  
9 Q. But before the night of November 7, 2000;  
10 is that right?  
11 A. Yes.  
12 Q. Did you feel that you had any  
13 responsibility for the well-being of Mr. Owensby?  
14 A. No.  
15 MR. WEISENFELDER: Objection.  
16 Go ahead.  
17 Q. Regardless of who is technically  
18 responsible for the well-being of a prisoner, if you  
19 know that a prisoner is injured and needs medical  
20 attention, is it your understanding that you have a  
21 duty to provide medical attention?  
22 A. Yes.  
23 Q. You knew that this person, Mr. Owensby,  
24 had blood around his nose and mouth; is that right?

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1 A. Yes.  
2 Q. Did you take any steps to administer any  
3 first aid for the blood around the nose and mouth?  
4 MR. WEISENFELDER: Objection.  
5 Go ahead.  
6 A. No.  
7 Q. Had you done so, do you think you would  
8 have been in a better position to determine whether  
9 or not Mr. Owensby was conscious or unconscious at  
10 the time he was placed in your vehicle?  
11 MR. WEISENFELDER: Objection.  
12 Go ahead.  
13 A. I don't know.  
14 Q. I know you said that you don't recall what  
15 Officer Brazile told you, but do you recall whether  
16 or not you took any action in response to what  
17 Officer Brazile told you?  
18 A. I don't recall.  
19 (Plaintiff's Exhibit 77  
was marked for identi-  
20 fication.)  
21 Q. Let me show you a portion of the Golf  
22 Manor manual, marked as Exhibit 77. Exhibit 77 is  
23 the Golf Manor manual provision 6-07 concerning  
24 prisoner transportation; is that right?

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1 A. That's correct.  
2 Q. That's one of the sections of the Golf  
3 Manor manual that you reviewed in preparation for  
4 your deposition today?  
5 A. That's correct.  
6 Q. Did you select out the sections to review  
7 today or did someone else select them out for you?  
8 The sections of the manual.  
9 A. Did I select these today?  
10 Q. No, no. When you were getting ready for  
11 your deposition, for today's deposition, you  
12 reviewed various sections of the Golf Manor manual.  
13 My question is did you select out those provisions  
14 to look at or did someone else select them out for  
15 you?  
16 MR. WEISENFELDER: I'm going to object. I  
17 think your invading the attorney-client  
18 privilege now, to the extent that the attorney  
19 may have been present when he was preparing for  
20 the deposition, and what he may have been  
21 instructed to review by an attorney I believe  
22 falls within that.  
23 Q. The only question I want to know is  
24 whether or not you selected the sections, either a

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1 yes or no, not as to any communication with any  
2 attorney.  
3 MR. WEISENFELDER: You can answer.  
4 A. No, I did not select the sections.  
5 Q. In Exhibit 77, if you go to page 4 you  
6 will see that it is blank. I have what I believe is  
7 page 4 based on what counsel has provided.  
8 MR. WEISENFELDER: Counsel will represent  
9 that when responding to request for production  
10 of documents approximately a year ago, that  
11 apparently in copying what was believed to be a  
12 responsive portion of the manual, page 4  
13 apparently was blacked out, not intentionally.  
14 (Plaintiff's Exhibit  
77A was marked for  
15 identi- fication.)  
16 Q. So I'm going to mark page 4 with  
17 Exhibit -- as 77A. I want to direct your attention  
18 to section II. A of the manual, which is on the  
19 first page of Exhibit 77.  
20 The second sentence of II. A. says,  
21 "Therefore, it is the policy of this department that  
22 EVERY prisoner transported in a police vehicle shall  
23 be searched and handcuffed by the transporting  
24 officer prior to being transported, unless



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1 specifically exempted under provisions of this  
2 procedure." Do you see that?  
3 A. I do.  
4 Q. Do you see that the word "EVERY" is  
5 capitalized?  
6 A. Yes.  
7 Q. Neither you nor Officer Campbell searched  
8 Mr. Owensby on the night of November 7, 2000; is  
9 that right?  
10 A. That's correct.  
11 Q. Had you searched Mr. Owensby do you  
12 believe that you would have been in a better  
13 position to discover whether or not at a minimum he  
14 was conscious or unconscious at the time that he was  
15 placed in the vehicle?  
16 MR. WEISENFELDER: Objection.  
17 Go ahead.  
18 A. Yes. We didn't search him because we  
19 weren't going to transport him.  
20 Q. If you had determined that he was  
21 unconscious, regardless of whether or not he was in  
22 your custody, would you have administered first aid  
23 to him?  
24 A. Yes. Or let the city --

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1 Q. Or called for --  
2 A. -- let the city officers, the arresting  
3 officers, know.  
4 Q. None of that was done, correct?  
5 MR. WEISENFELDER: Objection.  
6 Go ahead.  
7 A. Correct.  
8 Q. Am I correct in understanding that your  
9 reason as to why none of that was done was because  
10 you were not going to be transporting Mr. Owensby?  
11 A. Correct.  
12 Q. Have there been situations where Golf  
13 Manor has responded to a scene, that more than one  
14 Golf Manor car has responded to a scene, and a Golf  
15 Manor prisoner was placed in one car and then when  
16 it came time to transport the prisoner, the prisoner  
17 was moved to another Golf Manor car?  
18 MR. WEISENFELDER: Objection.  
19 Go ahead.  
20 A. I'm sure the situation has a --  
21 MR. WEISENFELDER: The question is do you  
22 know of one?  
23 A. If there's two police -- two Golf Manor  
24 cruisers there and there's only one prisoner, would

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1 he be transported by another agency?  
2 Q. No, no. My question is can you recall a  
3 situation where Golf Manor made an arrest and there  
4 was more than one Golf Manor car there at the scene.  
5 Okay?  
6 A. (Nodding head.)  
7 Q. The prisoner, the Golf Manor prisoner, is  
8 taken and placed in a Golf Manor car, but when it  
9 comes time to transport the prisoner, for some  
10 reason the prisoner is moved to another Golf Manor  
11 car. Maybe the car that he was originally placed in  
12 has another call to go to or something, so he's  
13 taken out and moved to another car to be  
14 transported. Do you recall any such situations?  
15 A. I don't recall.  
16 Q. Based on your training, if that happened,  
17 would Golf Manor search, be under an obligation to  
18 search the prisoner when he was being placed in the  
19 first car?  
20 MR. WEISENFELDER: Objection. Calls for  
21 speculation.  
22 Go ahead. You can answer.  
23 A. I don't understand the question.  
24 Q. A person is drunk and disorderly. Three

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1 Golf Manor cars arrive on the scene in response.  
2 A. Okay.  
3 Q. The person is arrested and is placed in  
4 the first Golf Manor car.  
5 A. Okay.  
6 Q. In the back seat. He's handcuffed and  
7 placed in the back seat. As it turns out, the  
8 officer that's driving the first car receives a call  
9 and has to go somewhere else. Okay?  
10 A. (Nodding head.)  
11 Q. So the person is taken out of the back  
12 seat of the car and moved into the second Golf Manor  
13 car for transport. Understood?  
14 A. Uh-huh.  
15 MR. WEISENFELDER: Yes?  
16 A. Yes.  
17 Q. In that situation, when the arrestee is  
18 placed in the first Golf Manor car, is it your  
19 understanding that per the Golf Manor manual that  
20 arrestee has to be searched?  
21 A. Before being placed in the first Golf  
22 Manor car?  
23 Q. Correct.  
24 A. Yes.

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1 Q. Go to paragraph D on that same page,  
2 bottom of the page. The second sentence says,  
3 "Every prisoner shall be placed in the Police  
4 vehicle and secured with seat belts." See that?  
5 A. Yes.  
6 Q. In this case Mr. Owensby was not secured  
7 with seat belts, was he?  
8 MR. WEISENFELDER: Objection.  
9 Go ahead.  
10 A. No.  
11 Q. Had he been secured with a seat belt he  
12 would have been sitting up, would he not?  
13 A. Correct.  
14 Q. Had you received any training from Golf  
15 Manor concerning positional asphyxia?  
16 A. At that time?  
17 Q. At that time.  
18 A. No.  
19 Q. Since that time have you received any  
20 training concerning positional asphyxia?  
21 MR. WEISENFELDER: Objection.  
22 Go ahead.  
23 A. Since that time we've received a video.  
24 There's a video, yes.

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1 Q. On positional asphyxia?  
2 A. Yes.  
3 Q. What is your understanding of what  
4 positional asphyxia is?  
5 A. My understanding is if somebody is in a  
6 position that it's hard for them to breathe is what  
7 it comes down to. That's my understanding of it.  
8 Somebody's in a position where it makes it hard for  
9 them to breathe.  
10 Q. Do you have any understanding as to why  
11 Mr. Owensby was not seat belted in the Golf Manor  
12 cruiser on the evening of November 7, 2000?  
13 A. No.  
14 Q. Take a look at section II. I., which is on  
15 page 3. It says, "Prior to being transported to or  
16 from a detention facility, the transporting officer  
17 shall ensure that a positive identification of the  
18 prisoner has been made, and that all required  
19 paperwork has been completed and accompanies the  
20 prisoner." See that?  
21 A. Yes.  
22 Q. I take it that was not done in this case,  
23 correct?  
24 MR. WEISENFELDER: Objection. By Golf

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1 Manor or by Cincinnati?  
2 MR. MARTINS: By Golf Manor.  
3 A. Correct.  
4 Q. To your knowledge, was it done by  
5 Cincinnati?  
6 A. I do not know.  
7 Q. Am I correct in understanding that the  
8 reason it was not done was because you were not  
9 asked to transport?  
10 MR. HARDIN: Objection. Are you saying it  
11 wasn't done by Golf Manor?  
12 MR. MARTINS: By Golf Manor. Sorry.  
13 MR. WEISENFELDER: You can answer.  
14 A. Correct.  
15 Q. Have you been in situations in part of  
16 this cooperation or assistance agreement where Golf  
17 Manor was asked to transport a prisoner?  
18 MR. WEISENFELDER: Okay. For point of  
19 clarification since we're dealing, I believe,  
20 with what you're referring to is the mutual aid  
21 agreement.  
22 MR. MARTINS: Mutual aid agreement.  
23 MR. WEISENFELDER: Being asked to  
24 transport a prisoner from whose jurisdiction by

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1 what agency?  
2 Q. A prisoner of another agency, Golf Manor  
3 is being asked to transport.  
4 A. I don't recall if I personally have been  
5 in that situation.  
6 Q. Have you heard of that?  
7 MR. WEISENFELDER: Objection.  
8 Go ahead.  
9 A. I have heard of it.  
10 Q. In that situation what is your  
11 understanding of whether or not the Golf Manor  
12 officer has an obligation to ensure the positive  
13 identification of the prisoner has been made?  
14 A. If an officer is going to be transporting  
15 somebody, they should, for example, if they're  
16 transporting to the jail, they should make sure they  
17 have the proper paperwork and that they have that  
18 person.  
19 Q. On November 7, 2000 you were simply asked  
20 by the Cincinnati police officers if they could  
21 place Mr. Owensby in the back seat of your cruiser,  
22 correct?  
23 A. Correct.  
24 Q. You said yes?

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1 A. I said, "Sure."  
2 Q. "Sure." Did anyone say to you words to  
3 the effect, "We're going to transport him later"?  
4 A. No.  
5 Q. Go to page 6, please. Section II. E.,  
6 first paragraph says, "Any prisoner who is sick or  
7 injured shall be examined by life squad personnel  
8 and offered treatment for their injury or illness  
9 prior to being transported to any jail or detention  
10 facility." See that?  
11 A. Yes, sir.  
12 Q. On November 7, 2000 did you understand  
13 that to be the policy and requirements of Golf  
14 Manor?  
15 A. Yes.  
16 Q. Did you make any attempt to determine  
17 whether or not Mr. Owensby was injured, other than  
18 seeing the blood around his nose and mouth?  
19 MR. WEISENFELDER: Objection.  
20 Go ahead.  
21 A. No.  
22 Q. I take it you took no steps to ensure that  
23 he was examined by life squad personnel, correct?  
24 MR. WEISENFELDER: Objection.

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1 Go ahead.  
2 A. Correct.  
3 Q. The only life squad personnel involved  
4 would have been when Sergeant Watts called for  
5 medical assistance, correct?  
6 MR. HARDIN: Object to the form of the  
7 question.  
8 MR. WEISENFELDER: Go ahead.  
9 A. Correct.  
10 Q. You never offered treatment for Mr.  
11 Owensby's injuries on the night of November 7, 2000,  
12 correct?  
13 MR. WEISENFELDER: Objection.  
14 Go ahead.  
15 A. Correct.  
16 Q. Had you attempted to ask him, ask Mr.  
17 Owensby, whether or not he wanted treatment for his  
18 injuries, the blood that you saw around the nose and  
19 mouth, you would have been able to determine whether  
20 or not he was conscious or unconscious, correct?  
21 MR. WEISENFELDER: Objection.  
22 Go ahead.  
23 A. Correct.  
24 Q. Did you know whether or not Mr. Owensby

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1 was Maced?  
2 A. I did not know.  
3 Q. Did you smell Mace when you got there?  
4 A. I did not.  
5 Q. Did you see any police officers or other  
6 individuals coughing or reacting to Mace?  
7 A. Not that I recall.  
8 Q. Have you used Mace?  
9 A. Yes.  
10 Q. Have you been Maced?  
11 A. Yes.  
12 Q. Based on your experience, what is the  
13 reaction to Mace?  
14 A. Based on my experience, it's rather  
15 unpleasant. It causes you to sneeze or your mucus  
16 membranes to excrete.  
17 Q. Does it make breathing difficult?  
18 A. To me personally, it didn't -- it wasn't  
19 tough for me to breathe when I was Maced. I can't  
20 speak for other people. I have heard that, but it  
21 wasn't for me.  
22 Q. Over the radio did you hear any report  
23 that Mr. Owensby had been Maced?  
24 A. No.

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1 Q. Paragraph E. 3. on page 6. It says, "If  
2 necessary, the Golf Manor Life Squad may be called  
3 to provide an ambulance for transportation to a  
4 medical facility." In this situation the Golf Manor  
5 life squad was never called, correct?  
6 MR. WEISENFELDER: Objection.  
7 Go ahead.  
8 A. Correct.  
9 Q. At E. 5. it says, "Unconscious prisoners  
10 shall not be transported in a police vehicle, but  
11 shall be taken to a hospital or medical facility by  
12 ambulance." Do you see that?  
13 A. Yes.  
14 Q. Again, there was no attempt by you or  
15 anyone on behalf of Golf Manor to determine whether  
16 or not the person being placed in your vehicle was  
17 conscious or unconscious, correct?  
18 MR. WEISENFELDER: Objection.  
19 Go ahead.  
20 A. Correct.  
21 Q. In fact, based on what you observed, your  
22 observations were consistent with someone who was  
23 unconscious, correct?  
24 MR. WEISENFELDER: Objection.

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1 Go ahead.

2 A. I didn't know if he was conscious or

3 unconscious.

4 Q. Well, you heard no sounds from the

5 individual at any time, correct, from Mr. Owensby?

6 A. Correct.

7 Q. You saw no movement from him at any time,

8 correct?

9 A. Correct.

10 Q. As of November 7, 2000, had you had any

11 training from Golf Manor as to whether or not you

12 should make a determination of whether a prisoner is

13 conscious or unconscious before that prisoner is

14 placed in your vehicle when you are in a situation

15 of assisting another police department?

16 A. No.

17 Q. Had you received any training on that

18 subject?

19 A. No.

20 Q. As you sit here today, have you received

21 any training on that subject?

22 MR. WEISENFELDER: Objection.

23 Go ahead.

24 A. No.

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1 Q. Based on your understanding of the rules

2 and regulations, policies of Golf Manor, if Officer

3 Campbell had made an arrest and the subject was

4 unconscious, would you believe that it would be okay

5 for Officer Campbell to place the subject in your

6 car, even though he was unconscious?

7 MR. WEISENFELDER: Objection.

8 Go ahead.

9 A. No.

10 Q. Am I correct in understanding that if the

11 subject is unconscious the policy is that he should

12 not be placed in any car and that an ambulance

13 should be called?

14 MR. WEISENFELDER: Objection.

15 Go ahead.

16 A. Correct.

17 Q. In addition to observing that Mr. Owensby

18 made no sounds and made no motion that evening, you

19 understood when you arrived on the scene that there

20 had been some sort of struggle in the arrest,

21 correct?

22 A. It appeared that there had been a

23 struggle, yes.

24 Q. You base that not only on the call for

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1 assistance, but when you arrived the officers were

2 disheveled and were breathing heavily, correct?

3 A. Correct.

4 Q. Again, in contrast to that you saw Mr.

5 Owensby was not breathing heavily, correct?

6 A. I don't recall.

7 Q. You did not notice that he was breathing

8 heavily?

9 A. I did not notice, correct.

10 (Plaintiff's Exhibit 78  
was marked for identi-

11 fication.)

12 Q. Let me show you Exhibit 78, a document

13 that we received yesterday. This is the mutual aid

14 agreement between Golf Manor and other police

15 departments in the greater Cincinnati area and

16 Cincinnati Police Department?

17 A. Correct.

18 Q. Have you in the course of performing your

19 duties at Golf Manor had the opportunity to review

20 this mutual aid agreement?

21 A. I have.

22 Q. Have you had any training at Golf Manor

23 concerning how to operate under the mutual aid

24 agreement?

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1 MR. WEISENFELDER: Objection as to what

2 he's already testified concerning his

3 understanding from other officers about the

4 agreement.

5 Q. I'm asking about formal training from Golf

6 Manor.

7 A. What do you mean by formal training?

8 Q. A class.

9 A. No.

10 Q. Have there been any directives or memos

11 given to you concerning how a Golf Manor officer is

12 to carry out the mutual aid agreement?

13 A. Not that I'm aware of.

14 Q. Have any superiors at Golf Manor explained

15 to you how an officer should behave in carrying out

16 the mutual aid agreement?

17 A. Not that I recall.

18 Q. Other than reading the mutual aid

19 agreement, which you said you did, have you received

20 any guidance from Golf Manor on how the terms of the

21 agreement should be carried out, what your

22 obligations are, what your duties are?

23 A. From working on the road with an FTO and

24 responding to other agencies, it's my understanding

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1 that you're under the authority of the jurisdiction  
2 where you're at. Other than that, that's about as  
3 far as the explanations went. I mean, you go there  
4 to assist, help out with what they need you to help  
5 out with, and then you go.  
6 Q. When you say an FTO, that's a field  
7 training officer?  
8 A. Correct.  
9 Q. Is that someone who is like a mentor to  
10 you?  
11 A. Yes.  
12 Q. Look at page 7 of Exhibit 78,  
13 paragraph VI. C. It says, "Whenever the law  
14 enforcement" employee of one cooperating Agency" --  
15 "employees of one cooperating Agency are providing  
16 police services in or to another cooperating agency  
17 pursuant to the authority contained in this  
18 contract, other legislative authority or state law,  
19 such employees will have the same power, duties,  
20 rights and immunities as if taking action within the  
21 territory of their employing Agency." What did you  
22 understand your duties to be under this  
23 circumstance?  
24 A. To respond and to assist the Cincinnati

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1 Police Department however they needed.  
2 Q. You see that it says the same duties as if  
3 taking action within the territory of Golf Manor.  
4 A. Yes.  
5 Q. If you were responding in the territory of  
6 Golf Manor to the arrest of Mr. Owensby would you  
7 have been responsible for his well-being?  
8 A. If he was my prisoner --  
9 MR. WEISENFELDER: Objection.  
10 Go ahead.  
11 A. If he was my prisoner, yes.  
12 Q. If he was not your prisoner, but you were  
13 located in Golf Manor and he was placed in your car,  
14 would you have been responsible for his well-being?  
15 MR. WEISENFELDER: Objection.  
16 Go ahead.  
17 A. No.  
18 Q. Why not?  
19 A. Because he wasn't my prisoner. Unless the  
20 arresting officer specifically asked me, "Can you  
21 keep an eye on my prisoner for me? I've got to go  
22 here."  
23 Q. Say this takes place in Golf Manor and the  
24 arresting officer is Officer Campbell, and you show

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1 up and Officer Campbell says, "Can I place Owensby  
2 in the back seat of your cruiser?" and you say,  
3 "Sure," are you responsible for Owensby's  
4 well-being?  
5 MR. WEISENFELDER: Objection.  
6 Go ahead.  
7 A. No.  
8 Q. Am I correct in understanding the reason  
9 you say no is because you did not arrest Mr.  
10 Owensby?  
11 A. At that point he would not be my prisoner.  
12 Q. Why?  
13 A. Because I did not arrest him.  
14 Mr. Campbell placed him under arrest.  
15 Q. Look at page 8, paragraph G. I'm looking  
16 at the second sentence. "Each Agency shall be  
17 responsible for the negligence of its employees to  
18 the extent specified by law." Do you have any  
19 understanding of what that means?  
20 MR. WEISENFELDER: Objection.  
21 Go ahead.  
22 If you do --  
23 A. I don't.  
24 Q. Did you receive any training or guidance

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1 as to how that provision could impact on you and the  
2 performance of your duties for Golf Manor?  
3 A. Provision G?  
4 Q. G. The sentence I just read to you, "Each  
5 Agency shall be responsible for the negligence of  
6 its employees to the extent specified by law."  
7 A. To that specific -- no.  
8 Q. Have you received any training from Golf  
9 Manor as to any responsibilities of its officers  
10 created by a violation of a citizen's constitutional  
11 rights where Golf Manor is a cooperating agency?  
12 A. No.  
13 Q. Is it your understanding that this  
14 Exhibit 78 was in effect on November 7, 2000?  
15 A. Yes.  
16 Q. That was part of the reason why you  
17 responded on November 7, 2000?  
18 A. That's correct.  
19 Q. I want to ask about a couple of  
20 apprehension techniques.  
21 A. Okay.  
22 Q. Did you ever hear of a head wrap  
23 technique?  
24 A. I've never heard of a head wrap.



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1 A. I heard something on the radio, yes.  
2 Q. Which you identified as somebody saying,  
3 "shoot him"?  
4 A. Something's going on, some type of  
5 trouble.  
6 Q. Let me refer you if I may to Exhibit  
7 Number 72. If you go to page 2, about halfway down.  
8 Do you see the question: "Do you remember exactly  
9 what you heard?  
10 "Answer: I can't make out exactly what I  
11 heard. I thought I heard somebody say shoot him."  
12 A. Yes.  
13 Q. Now, this statement was given the early  
14 morning hours of November 8th, 2000?  
15 A. Correct.  
16 Q. Right, basically, after the incident  
17 occurred?  
18 A. I believe the time is after midnight when  
19 they took the statement.  
20 Q. 0020 hours, if you look on the first page?  
21 A. Correct.  
22 Q. So that's 20 minutes after midnight?  
23 A. Correct.  
24 Q. That you gave your statement?

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1 A. Yes.  
2 Q. Would you feel that your recollection of  
3 the events was clearer on that day than it is today?  
4 A. Possibly. I mean, a lot of things were  
5 clearer that night, yeah.  
6 Q. The event had just occurred?  
7 A. It just occurred.  
8 Q. Maybe a few hours before?  
9 A. Right.  
10 Q. You hadn't talked to anybody about the  
11 incident, had you, from the time that it occurred  
12 until you were interviewed?  
13 A. No.  
14 Q. So you were giving to the investigators  
15 who were taking the statement your best recollection  
16 about what had just occurred?  
17 A. Correct.  
18 Q. Do you recall telling them that you  
19 thought you heard somebody say, "shoot him"?  
20 A. Yes, I do recall.  
21 Q. That's why you tapped him on the shoulder?  
22 A. That's why I tapped my partner on the  
23 shoulder.  
24 Q. That was before the actual assistance run

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1 came out?  
2 A. That was before the actual assistance run.  
3 Q. So did you respond to the statement that  
4 you thought you heard about somebody saying, "shoot  
5 him"? Did you respond to that or did you respond to  
6 the assistance run that came out later?  
7 A. We responded when the officer needs  
8 assistance run came out.  
9 Q. You didn't respond when you heard them  
10 say, "shoot him"?  
11 MR. MARTINS: Objection. Asked and  
12 answered.  
13 A. No.  
14 Q. I'm sorry?  
15 MR. WEISENFELDER: He said no.  
16 Q. Go down if you will to the bottom of page  
17 2 of that same statement that you gave on  
18 November 8, 2000. And your answer was, "Knowing  
19 what I know now, that wasn't anything that I heard,"  
20 meaning "shoot him," right?  
21 A. Correct.  
22 Q. "But I, I that's why I tapped him. And I  
23 started heading to the, an address came out. He  
24 said it was down at Sam's, right around the corner,

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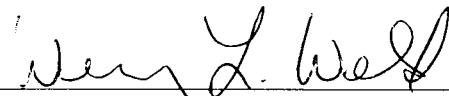
1 on Seymour. So I ran to my cruiser. Uhm, jumped  
2 in. Lights and sirens. Started heading down. The,  
3 the assistance call came out at that time, as I was  
4 proceeding down Wiehe towards Langdon Farm." Is  
5 that correct?  
6 A. That's what it says in this statement,  
7 correct.  
8 Q. Do you have any reason to doubt the  
9 accuracy of this statement?  
10 A. No reason to doubt it, no.  
11 Q. You reviewed this statement prior to the  
12 deposition today?  
13 A. Correct. Yes.  
14 Q. After reading that, does that refresh your  
15 recollection as to whether or not you responded to  
16 the words "shoot him" or you responded to the  
17 assistance call?  
18 A. We responded to the assistance call.  
19 Q. But you were already on your way, weren't  
20 you, when the assistance call came out?  
21 A. If you read the statement, that's the way  
22 it does sound.  
23 Q. Right.  
24 A. But we did not go to the scene, because

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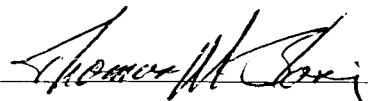
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STATE OF OHIO :  
: SS  
COUNTY OF HAMILTON :

I, Wendy L. Welsh, Notary Public in and for the State of Ohio, do hereby state that the transcript of the deposition of ROBERT B. HEILAND, JR., deponent herein, having been submitted to said deponent for review and signature, has not been signed within the thirty (30) day period allowed under the Federal Rules; said deposition to now have the same force and effect as though signed.

  
Wendy L. Welsh, Court Reporter

Sworn to before me this 27<sup>th</sup> day of January, 2004.



Thomas M. Blasing  
Notary Public - State of Ohio

My commission expires:  
May 4, 2004.